

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU and any of its PAs, will be controlled as follows:

9.1.1 such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information);

9.1.2 access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1, and will be subject to the provisions of Section XII (Third Party Sales and Transfers);

9.1.3 each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2 To assist in providing the appropriate controls, the originating Participant will ensure Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. Where necessary appropriate markings will be defined:

9.2.1 for Working Groups, in the TOR;

9.2.2 For RUTF PAs or PETs, through an exchange of correspondence between the POs; or

9.2.3 for CTE PAs, in the Project Security Instruction.

9.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

SECTION X

VISITS TO ESTABLISHMENTS

10.1 Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants, the employees have any necessary and appropriate security clearances, and a need-to-know.

10.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the host Participant. Requests for visits will bear the name of this MOU and the appropriate PA.

10.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with each Participant's recurring international visit procedures.

SECTION XI

SECURITY

11.1 All Classified Information provided or generated pursuant to this MOU and any of its PAs will be stored, handled, transmitted and safeguarded in accordance with the General Security of Information Agreement between the Government of the United States and the Government of the Kingdom of the Netherlands of 18 August 1960, as amended, and the Industrial Security Agreement of 9 April 1982.

11.2 Classified Information will be transferred through official government-to-government channels only or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification; denote the country of origin, the conditions of release, and the fact that the information relates to this MOU and the applicable PA.

11.3 Each Participant will take all lawful steps available to it to ensure Classified Information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1 the recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XII (Third Party Sales and Transfers);

11.3.2 the recipient will not use the Classified Information for other than the purposes provided for in this MOU, and

11.3.3 the recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

11.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons or other entities. Each Participant also will promptly and fully inform the other Participant of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5 When a CTE PA contains provisions for the exchange of Classified Information, the POs will prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the CTE PA. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded. The PSI and CG will be developed by the PO within three months after the CTE PA enters into effect. They will be reviewed and

forwarded to the Participants' DSAs for approval and will be applicable to all government and Contractor personnel participating in the project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6 The DSA of the Participant in which a classified Contract is awarded pursuant to this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, subcontractor, or prospective subcontractor of any Classified Information provided or generated under this MOU, the DSAs will:

11.6.1 ensure that such Contractor, prospective Contractor, subcontractor or prospective subcontractor and their facility(ies) have the capability to protect the Classified Information adequately under each Participant's National Industrial Security Program;

11.6.2 grant a security clearance to the facility(ies);

11.6.3 grant a security clearance for all personnel whose duties require access to Classified Information;

11.6.4 ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU;

11.6.5 carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and

11.6.6 ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU and any of its PAs.

11.7 Contractors, prospective Contractors, subcontractors or prospective subcontractors which are mutually determined by the DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU or any of its PAs only when enforceable measures are in force to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in force to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

11.8 For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Classified Information pertaining to this MOU and any of its PAs. These officials will be responsible for limiting access to Classified

Information involved in this MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

11.9 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in this MOU or any of its PAs.

11.10 Information provided or generated pursuant to this MOU may be classified as high as SECRET in accordance with the agreements referenced in paragraph 11.1. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED. The classification of the existence of any PA and its contents will be stated in that PA.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1 Except to the extent permitted in paragraph 12.2, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the other Participant's Government. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant's Government. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

12.1.1 not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2 use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

12.2 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information that:

12.2.1 is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section III (Scope of Work);

12.2.2 does not include any Project Foreground Information or Project Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment of the other Participant.

12.3 In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2, the matter will be brought to the immediate attention of the other Participant's MA. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.4 A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Participant to any Third Party without the prior written consent of the Participant that provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

12.5 Consent for Third Party sales and transfers of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information, will be subject to foreign policy, national security considerations, and national laws, regulations, and policies.

SECTION XIII

LIABILITY, CLAIMS AND STATUS OF PERSONNEL

13.1 With the exception of claims for loss of or damage to TEP Equipment under Section VII (Project Equipment Transfers), claims against either Participant or its personnel will be dealt with in accordance with Section VIII of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, signed in London on June 19th, 1951 (NATO SOFA).

13.2 Claims arising under or related to any contract awarded pursuant to Section VI (Contracting Provisions) will be dealt with in accordance with the provisions of the contract.

13.3 The military and civilian employees of a Participant assigned to duty with its defense department or ministry, while present in the territory of another Participant, will, to the extent that they are so qualified, be members of a "force" and "civilian component" respectively, within the meaning of Article I of the NATO SOFA. Employees and agents of Contractors will not be considered to constitute a civilian component and the NATO SOFA will not apply to them.

SECTION XIV

CUSTOMS DUTIES AND SIMILAR CHARGES

14.1 Customs duties, import and export charges, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under a TEP Activity.

14.2 Each Participant will use its best efforts to ensure that customs duties, import and export charges, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If, despite having followed appropriate procedures, any such duties or similar charges are levied, the Participant in whose country they are levied will bear such costs. Any such costs will not be considered to fall under either Participant's shared costs.

14.3 If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts of the components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties will be levied as a cost over and above that Participant's shared cost of the Project.

SECTION XV

SETTLEMENT OF DISPUTES

15.1 Disputes between the Participants arising under or relating to this MOU or any of its PAs will be resolved by consultation between the Participants only and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

SECTION XVI

GENERAL PROVISIONS

16.1 All activities of the Participants under this MOU will be carried out in accordance with their national laws. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

16.2 In the event of a conflict between the provisions of this MOU and any TEP PA or PET Form, this MOU will take precedence.

16.3 No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

SECTION XVII

AMENDMENT, TERMINATION, EFFECTIVE DATE, AND DURATION

17.1 This MOU, or PAs to this MOU, may be amended by the mutual written consent of the Participants.

17.2 This MOU or PAs to this MOU may be terminated at any time by the mutual written consent of the Participants. In the event the Participants consent to terminate this MOU or PAs to this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms. Termination of this MOU will result in the termination of all PAs to this MOU.

17.3 Either Participant may terminate this MOU or PAs to this MOU upon 90 days written notice of its intent to terminate to the other Participant. Such notice will be the subject of immediate consultation to decide upon the appropriate course of action to conclude the activities under this MOU or PA. In the event of such termination, the following rules apply:

17.3.1 The Participants will continue participation, financial or otherwise, in all PAs subject to the notice of termination, up to the effective date of termination;

17.3.2 Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own project-related costs associated with termination of the Project. For Contracts awarded on behalf of both Participants, the terminating Participant will pay all Contract modification and termination costs that would not otherwise have been incurred but for the decision to terminate. The Participants will endeavor to minimize all costs of termination. In no event will a terminating Participant's total financial contribution, including Contract termination costs, exceed that Participant's total financial contribution for the PA being terminated;

17.3.3 All Project Information and rights therein received under the provisions of this MOU or PAs prior to termination of the MOU or its PAs will be retained by the Participants, subject to the provisions of this MOU and its PAs;

17.3.4 If requested by the other Participant, the terminating Participant may continue to administer the project Contract(s) which it awarded on behalf of the other Participant on a reimbursable basis; and

17.3.5 Additional PA termination provisions consistent with this Section may be established in the PA.

17.4 The respective rights and duties of the Participants regarding Section VII (Project Equipment), Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers), Section XIII (Liability, Claims and Status of Personnel), Section XV (Settlement of Disputes) and this Section XVII (Amendment, Termination, Effective Date and Duration) will continue notwithstanding termination or expiration of this MOU or any of its PAs.

17.5 This MOU, which consists of seventeen (17) Sections and three (3) Annexes, will come into effect on the date of last signature, and will remain in effect for ten (10) years unless terminated by either Participant. This MOU will be automatically extended for successive five-year periods unless one Participant notifies the other in writing six months prior to expiration that it does not desire this MOU to be extended.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this MOU.

SIGNED, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

Thomas A Christie
Signature

Thomas P. Christie
Name

Director, Operational Test and Evaluation
Title

12 FEBRUARY 2004
Date

WASHINGTON, D.C.
Location

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF THE NETHERLANDS

[Signature]
Signature

Rear Admiral Ir. Dirk van Dord
Name

Principal Director for Materiel
Title

26 January
Date

Den Haag
Location